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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PENSION TRUST FUND FOR OPERATING
ENGINEERS; F.G. CROSTHWAITE and
RUSSELL E. BURNS, as Trustees,

Plaintiffs,

vs.

TRACTOR EQUIPMENT SALES, INC., a
California corporation, et al., and DOES 1-20

Defendants.

Case No.: C 12-01056 JSW

**REQUEST TO CONTINUE CASE
MANAGEMENT CONFERENCE AND
ALL RELATED DEADLINES;
~~[PROPOSED]~~ ORDER THEREON**

Date: May 6, 2013

Time: 1:30 p.m.

Courtroom 11, 19th Floor

Judge: The Honorable Jeffrey S. White

Plaintiffs herein respectfully request that the Case Management Conference currently on calendar for May 6, 2013, 1:30 p.m., and all related deadlines, including ADR deadlines, be continued for 90 days.

1. Good Cause exists for the request: This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (29 U.S.C §§1001-1461 (1982)), to recover withdrawal liability amounts owed by Tractor Equipment Sales, Inc. and its controlled group members to plaintiffs Pension Trust Fund for Operating Engineers, F.G. Crosthwaite, and Russell E. Burns (“Plaintiffs”).

2. On March 1, 2012, plaintiffs filed a Complaint in this matter. (Dkt. #1)

3. Service was effectuated on defendants Tractor Equipment Sales, Inc., a California corporation, J.L. White International, Inc., a California corporation, and TES Asset Management and Consulting Group, a California joint venture, by personal service on Jim White, authorized agent and/or officer for each defendant on April 9, 2012. A proof of service was filed on April 19, 2012. (Dkt. # 10)

4. Defendant Tractor Equipment Sales, a California corporation, filed a Chapter 7 Bankruptcy in the U.S. Bankruptcy Court, Northern District of California, on May 14, 2012. On June 7, 2012, plaintiffs filed a Notice of Automatic Stay Under 11 U.S.C. Section 362 as to defendant Tractor Equipment Sales, Inc. only. (Dkt. #15) Further, plaintiffs' counsel made an appearance at the Meeting of Creditors wherein plaintiffs' counsel conferred with counsel for defendant Tractor Equipment Sales, a California corporation and the Bankruptcy Trustee.

5. On May 29, 2012, plaintiffs filed their first request that the Case Management Conference scheduled on June 22, 2012, and all of its associated deadlines, be continued for 60 days in anticipation of plaintiffs filing a Request for Entry of Default against Defendant TES Asset Management and Consulting Group, a California joint venture and/or amending the complaint to add new defendants. (Dkt. 12)

6. On May 30, 2012, the Motion to Continue Case Management was granted by the Court and the Case Management Conference was continued to August 24, 2012 at 1:30 pm. (Dkt. #13)

7. On June 19, 2012, plaintiffs filed a Notice of Voluntary Dismissal of Defendant J.L. White International, Inc. only. (Dkt. 16)

8. On July 25, 2012, plaintiffs filed a Request for Default of TES Asset Management and Consulting Group, a California joint venture, only. (Dkt. # 17)

9. On July 30, 2012, plaintiffs filed their second request that the Case Management Conference scheduled on August 24, 2012, and all of its associated deadlines, be continued for 90 days in anticipation of plaintiffs filing a Motion for Default as to defendant TES Asset Management and Consulting Group, a California joint venture. (Dkt. # 18)

1 10. On August 1, 2012, the Motion to Continue Case Management was granted by the
2 Court and the Case Management Conference was continued to December 7, 2012 at 1:30 pm.
3 (Dkt. # 22)

4 11. On October 30, 2012, Plaintiffs received an Order from the bankruptcy court
5 granting a document production that occurred on December 11-12, 2013 (the earliest available
6 date for debtor's bankruptcy counsel). Defendants' produced voluminous financial documents.

7 12. On November 7, 2012, plaintiffs filed their third request that the Case Management
8 Conference scheduled on December 7, 2012, and all of its associated deadlines, be continued for
9 90 days in anticipation of defendants producing financial documents in the bankruptcy proceeding.
10 (Dkt. # 24)

11 13. On November 8, 2012, the Motion to Continue Case Management was granted by
12 the Court and the Case Management Conference was continued to February 15, 2013 at 1:30 pm.
13 (Dkt. # 25)

14 14. On January 11, 2013, plaintiffs filed a Notice of Voluntary Dismissal of Defendant
15 TES Asset Management & Consulting, only, based on information produced during the
16 bankruptcy proceeding. (Dkt. 26)

17 15. On January 30, 2013, plaintiffs filed their fourth request that the Case Management
18 Conference scheduled on February 15, 2013, and all of its associated deadlines, be continued for
19 90 days since no defendants appeared in this action. (Dkt. # 27)

20 16. On January 30, 2013, the Motion to Continue Case Management was granted by
21 the Court and the Case Management Conference was continued to May 3, 2013 at 1:30 pm. (Dkt.
22 #28).

23 17. On March 28, 2013, pursuant to the Clerk's Notice, the Initial Case Management
24 Conference was rescheduled to Monday, May 6, 2013 at 1:30 p.m. due to budget reductions
25 caused by sequestration.

26 18. After conducting an extensive document review, Plaintiffs' counsel determined that
27 they will file a First Amended Complaint adding new parties Steven and Rena Van Tuyl, the
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1 owners of the defendant business and members of its controlled group. Plaintiffs' counsel notified
2 both bankruptcy counsel for Tractor Equipment Sales, Inc. and Steven Van Tuyl and Rena Van
3 Tuyl that the filing a First Amended Complaint in said instant action was imminent, naming both
4 the Van Tuyls individually. On March 22, 2013, counsel for Steven Van Tuyl and Rena Van Tuyl
5 sent correspondence to plaintiffs' counsel notifying plaintiffs' counsel of his representation and
6 requesting further information. Thereafter, on March 28, 2013, the Van Tuyls' counsel and
7 Plaintiffs' counsel conducted a telephone call wherein the Van Tuyls' counsel requested time to
8 conduct further investigate into Plaintiffs' claims and to confer with his clients in an attempt to
9 settle the case rather than engage in further litigation.

10 19. Since no defendants have appeared in the action, there is no need to hold a Case
11 Management Conference or elect an ADR procedure.

12 20. Therefore, plaintiffs respectfully request that the Case Management Conference
13 currently scheduled for May 6, 2013, and all of its associated deadlines, be continued for 90 days
14 in anticipation of Plaintiffs' counsel conferring with counsel for the Van Tuyls, potential
15 settlement, and/or arranging for acceptance of service and filing of a responsive pleading by the
16 Van Tuyls.

17 I declare under penalty of perjury that I am the attorney for the plaintiffs in the above
18 entitled action, and that the foregoing is true of my own knowledge.

19 Executed this 11th day of April, 2013, at San Francisco, California.

20 SALTZMAN & JOHNSON LAW CORPORATION

21 By: /S/
22 Julie A. Richardson
23 Attorneys for Plaintiffs
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ORDER

IT IS SO ORDERED.

Based on the foregoing, and GOOD CAUSE APPEARING, the currently set Case Management Conference is hereby continued to August 9, 2013 at 1:30 p.m. All related deadlines, including ADR deadlines, are extended accordingly.

Date: April 15, 2013



THE HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE